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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

MIGUEL ANGEL CORONA,

Defendant and Appellant.

D054887

(Super. Ct. No. JCF20587)

APPEAL from an order of the Superior Court of Imperial County, Christopher W. Yeager, Judge. Affirmed.

The court entered an order revoking Miguel Angel Corona's probation based on its finding that he violated Penal Code<sup>1</sup> section 148 (resisting, delaying, or obstructing an officer) by refusing to answer officers' questions about his identity. Corona appeals that order, contending his actions did not constitute a violation of section 148 because (1) his

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<sup>1</sup> All statutory references are to the Penal Code.

refusal to answer questions was protected under the First Amendment of the United States Constitution; (2) refusal to answer an officer's questions before arrest does not give rise to a violation of section 148 as a matter of law; and (3) his refusal to answer the officers' questions in this case did not violate section 148 because it did not obstruct or delay the officers. We affirm.

### FACTUAL AND PROCEDURAL BACKGROUND

In November 2007 Corona pled no contest to a charge of assault on a custodial officer (§ 241.1) and the court sentenced him to three years in state prison, suspended execution of the sentence and placed him on formal probation for three years. The terms and conditions of Corona's probation required him to follow reasonable orders of the probation officer and obey all federal, state, and local laws.

On February 11, 2009, Deputy Probation Officer Andrew Mange and his supervisor, Joe Ochoa were in a parked car conducting street enforcement in El Centro when they saw Corona with Max Juarez. Mange recognized both men and Ochoa recognized Juarez. Ochoa pulled the car up next to them and Mange identified himself as a police officer and asked if they were on probation or parole. Juarez said he was on probation and Corona said he was on parole. Mange exited the car and said he was going to conduct probation and parole checks on them and check for warrants. Mange got Juarez's identifying information, cleared him for warrants and probation holds and let him go on his way.

While Mange was questioning Juarez, Ochoa asked Corona his birth date, where he lived and the name of his parole officer. Corona did not respond to any of Ochoa's

questions. Ochoa told Corona, "You give me no choice but to arrest you." Corona replied, "Arrest me."

After Mange cleared Juarez, Ochoa told him that Corona was refusing to provide his identification and other information necessary to run a records check. Mange said to Corona, "You know what, just give us your information. I'll run your name real quick and you'll be on your way if everything is clear." Corona laughed sarcastically, looked up in the air and shook his head "no." Mange then arrested him for obstructing and delaying an officer.

After a contested probation revocation hearing, the court found Corona violated section 148 and, therefore, was in violation of the condition of his probation that he obey all laws. The court revoked Corona's probation and reinstated it on the same terms and conditions previously imposed, and ordered Corona to serve 180 days in county jail with credit for 75 days already served.

## DISCUSSION

### *I. Section 148*

Corona separately contends that refusal to answer an officer's questions before arrest does not give rise to a violation of section 148 as a matter of law, and his refusal to

answer the officers' questions in this case did not violate section 148 because it did not obstruct or delay the officers. We reject both contentions.<sup>2</sup>

"The legal elements of a violation of section 148, subdivision (a) are as follows: (1) the defendant willfully resisted, delayed, or obstructed a peace officer, (2) when the officer was engaged in the performance of his or her duties, and (3) the defendant knew or reasonably should have known that the other person was a peace officer engaged in the performance of his or her duties. [Citations.]' [Citation.] The offense is a general intent crime, proscribing only the particular act (resist, delay, obstruct) without reference to an intent to do a further act or achieve a future consequence. [Citation.]" (*In re Muhammed C.* (2002) 95 Cal.App.4th 1325, 1329.)

"Section 148 is most often applied to the physical acts of a defendant. [Citation.] For example, physical resistance, hiding, or running away from a police officer have been found to violate section 148. [Citations.] But section 148 'is not limited to nonverbal conduct involving flight or forcible interference with an officer's activities. No decision has interpreted the statute to apply only to physical acts, and the statutory language does not suggest such a limitation.' [Citation.]" (*In re Muhammed C., supra*, 95 Cal.App.4th at pp. 1329-1330.)

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<sup>2</sup> Although the parties both discuss the substantial evidence standard of review in connection with the issue of whether the court correctly found that Corona violated section 148, we review that issue de novo because the relevant facts forming the basis of the finding are undisputed. (*People v. Hernandez* (2009) 177 Cal.App.4th 1182, 1187 [application of statute to undisputed facts is a question of law subject to de novo, independent review].)

Here, by refusing to answer the officers' questions about his identity, Corona willfully delayed and obstructed the officers in the performance of their duties. Corona knew the officers were peace officers engaged in the performance of their duties because they informed him that they were police officers and, after Corona told them he was on parole, they informed him that they wanted to conduct a probation and parole check on him and check for warrants. At that point, Corona reasonably knew or should have known that running those checks was within the scope of the officers' duties and that they needed his cooperation in providing his identifying information to run the checks. By refusing to provide that information, he willfully delayed and obstructed them in the performance of their duties and, accordingly, violated section 148, subdivision (a)(1).

Regarding Corona's contention that refusal to answer an officer's questions before arrest does not give rise to a violation of section 148 as a matter of law, we conclude that although generally there may not be an obligation to answer questions posed by a police officer before arrest, such an obligation exists when the person questioned has identified himself or is known by the officer to be on parole or probation, and the questions reasonably go to a determination of whether the person has violated the conditions of parole or probation. Having identified himself as a parolee, Corona's refusal to provide necessary information for the officers to run a check for outstanding warrants or pending cases against him constituted willful resistance, delay, and obstruction of the officers in their attempt to discharge their duty with respect to his status as a parolee. Corona's conduct satisfied the legal elements of a violation of section 148, subdivision (a)(1), and the court properly revoked Corona's probation on that ground.

## II. *First Amendment*

Corona contends his refusal to answer questions was protected under the First Amendment of the United States Constitution. We disagree.

In certain contexts, the First Amendment protects the right against compelled speech. (See, e.g., *Wooley v. Maynardi* (1977) 430 U.S. 705 [right to not display state motto of "Live Free or Die" on motor vehicle license plate]; *Miami Herald Publishing Co. v. Tornillo* (1974) 418 U.S. 241 [right of newspapers to not publish the replies of political candidates whom they had criticized]; *Board of Education v. Barnette* (1943) 319 U.S. 624 [right of public school students to not recite pledge to the American flag]; *Lehnert v. Ferris Faculty Association* (1991) 500 U.S. 507, 522 [state cannot compel state employees required to pay union dues to subsidize the union's legislative lobbying or other political activities outside the limited context of contract ratification or implementation].) However, there is no generalized First Amendment right not to speak (see *State v. Dawson* (N.M.Ct.App. 1999) 983 P.2d 421, 425), and there is no *First Amendment* right to refuse to identify one's self to a police officer during a lawful investigative stop. (*Albright v. Rodriguez* (10th Cir. 1995) 51 F.3d 1531, 1539.)<sup>3</sup>

" '[T]he protections of the First Amendment . . . do not afford a witness the right to resist inquiry in all circumstances.' The right to refuse to speak must give way where 'the State [can] show a substantial relation between the information sought and a subject of

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<sup>3</sup> In contexts not involving police questioning of known probationers or parolees, some courts have concluded there is a *Fourth Amendment* right to not identify one's self during a lawful investigative stop. (See *Carey v. Nevada Gaming Control Board* (9th Cir. 2002) 279 F.3d 873, 881-882.)

overriding and compelling state interest.' " (*In re Jorge G.* (2004) 117 Cal.App.4th 931, 951.) Here, any right Corona had to refuse to speak to police officers gave way to the state's overriding interest in supervising persons on parole and probation. (See *Griffin v. Wisconsin* (1987) 483 U.S. 868, 875 [supervision of probationers is a "special need" of the state permitting a degree of impingement upon privacy that would be unconstitutional if applied to the public at large]; *Pennsylvania Bd. of Probation and Parole v. Scott* (1998) 524 U.S. 357, 365 [state has an overwhelming interest in ensuring that a parolee complies with the requirements of parole and is returned to prison if he fails to do so].)

Corona relies on *In re Gregory S.* (1980) 112 Cal.App.3d 764 (*Gregory*) and *People v. Quiroga* (1993) 16 Cal.App.4th 961 (*Quiroga*) for the proposition that a person temporarily detained by law enforcement officers should not risk arrest for choosing to remain silent. Although the *Gregory* court ultimately concluded the appellant in that case violated section 148 by refusing to cooperate with police officers, it rejected the trial court's "legal conclusion that a person who merely refuses to identify himself or to answer questions *in a context similar to that before us* thereby violates . . . section 148 or otherwise furnishes ground for arrest." (*Gregory, supra*, at p. 779.) The *Gregory* court expressly limited its right-to-silence analysis to the context before it, which did not involve a known probationer's or parolee's refusal to identify himself or answer questions asked by police officers, and the court did not base its analysis on the First Amendment.

Likewise, *Quiroga* did not involve a known probationer's or parolee's refusal to identify himself or answer questions asked by police officers. Although the *Quiroga* court academically speculated that a detainee's right to silence "may reflect the First

Amendment protection against compelled speech" (*Quiroga, supra*, 16 Cal.App.4th at p. 969, fn. 2), the issue the court actually decided, with no First Amendment analysis, was whether an arrestee's refusal to identify himself "in the narrow context of a booking interview" (*Quiroga* at p. 969) was a violation of section 148.<sup>4</sup>

"[A] defendant has no right to be granted probation; probation is a privilege, an act of grace or clemency." (*In re Osslo* (1958) 51 Cal.2d 371, 377.) Likewise, parole is a privilege or matter of grace, not a right. (*People v. Ray* (1960) 181 Cal.App.2d 64, 69; *In re Harris* (1947) 80 Cal.App.2d 173, 178.) We conclude that a person on probation or parole has no First Amendment right to refuse to comply with a peace officer's request for identifying information when the officer is aware of the person's probation or parole status, and the information is requested for the purpose of ascertaining the person's compliance with the conditions of the probation or parole.

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<sup>4</sup> The court concluded the jury could reasonably find a violation of section 148 in that context. (*Quiroga, supra*, 16 Cal.App.4th at p. 972.)



DISPOSITION

The order revoking Corona's probation is affirmed.

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O'ROURKE, J.

WE CONCUR:

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BENKE, Acting P. J.

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McDONALD, J.